WP(C) 2696/2007

BEFORE

HON'BLE JUSTICE AMITAVA ROY

The legality and validity of the judgment and order dated 20/2/2007 passed by the learned Foreigners Tribunal, Diphu, in case No. FT 169/06(T) holding the petitioner to be a foreigner under the Foreigners Act, 1946 (hereafter referred to as the Act) and the consequential order No. DPU(B)/Q.I./77/2007 dated 19/5/2007 of the Superintendent of Police, Karbi Anglong District, Diphu, Assam, ordering her to quit the territories of India is under challenge in the instant proceeding.

2. I have heard Mr. MU Mondol, learned Counsel for the petitioner and Mr. H. Rahman, learned State Counsel. None appears on behalf of the Union of India.

3. The petitioner's case in brief is that she is an Indian citizen by birth being born at Rahman Colony, Dharamnala Road, in Diphu Town, Karbi Anglong District of Assam. She having lost her parents at infancy grew up under the care and guardianship of one Abdur Rahman. She was thereafter married to one Abdul Mallik who deserted her about 20 years back whereafter she remarried one Imamuddin Ansari of the same place. Her husband is originally from the District of Chapra in Bihar. The name of her adoptive father Abdur Rahman figured in the voters' list of 1966 for No. 19 Bokajan Assembly Constituency of Assam. He is a permanent resident of Karbi Anglong District having immovable property. The name of her earlier husband was also enrolled in the voters' list of 1989 for No. 19. Diphu (S.T.) Legislative Assembly Constituency. He also possessed patta land under periodic lease covered by Dag No. 130/336 and Patta No. 121 under Jamunapur Mouza in the same District. Her present husband is a businessman by profession having a shop under licence No. 1/DPU/796 dated 10/9/1978. Her name also figured in the voters' list of 1997 for No. 19 Diphu (ST) LAC though therein her husband's name was wrongly reflected as Imam Ali instead of Imamuddin.

4. The reference case No. 102/03 was registered against her with the IMDT Tribunal, Diphu, which was eventually transferred to the Foreigners Tribunal (hereafter referred to as the Tribunal) and was registered as FT 169/06(T) in which on receiving notice thereof she appeared. By the impugned judgment and order she has been declared to be a foreigner under the Act. By the impugned order dated 19/5/2007 of the Superintendent of Police (B), Karbi Anglong, Diphu, she has been directed to leave India. The petitioner has insisted that the determination made by the learned Tribunal is patently illegal being against the weight of the evidence and recorded facts. The quit India notice is also in contravention of section 6(A)(3) and 18 of the Citizenship Act, 1955.

5. Mr. Mondol has emphatically urged that it being explicit from the evidence adduced before the learned Tribunal that the petitioner was a citizen of India by birth, the finding that she is a foreigner having entered Assam from Bangla Desh on or after 25/3/1971 is perverse and, therefore, the impugned judgment and order is liable to be interfered with by this Court. Without prejudice to the above, the learned Counsel has urged that even if the conclusion of the learned Tribunal is sustainable in law and on facts, the petitioner is entitled to have herself registered under section 18 of the Citizenship Act and, therefore, the quit India order is per se illegal and inoperative in law.

6. The learned State Counsel as against this has argued that the learned Tribunal having arrived at its conclusion on an exhaustive analysis of the materials on record, no interference with the impugned judgment and order is warranted, the petitioner having failed to adduce any additional material to displace the same. The determination that the petitioner is a foreigner being a finding of fact, this Court in the exercise of its power of judicial review would not re-appraise the evidence to substitute its view for that of the learned Tribunal.

7. It is manifest from the judgment and order under challenge that the complainant State had examined one witness namely the Enquiry Officer, Sub-Inspector of Police (B), Shri Dhiren Ch. Das who had conducted an investigation into the facts preceding submission of the enquiry report, Exhibit 2. In defence,

the petitioner has examined herself and two other witnesses namely Smt. Bulu Devi and Ismail Seikh apart from producing a certified copy of the voters' list of 19. Diphu (S.T.) Legislative Assembly Constituency, Exhibit A, containing her name and that of her husband as voters from Dharamnala Village within Diphu Town. The complainant State's assertion that the petitioner had entered Assam from the specified territory i.e. Bangla Desh on or after 25/3/1971 without any valid authority and had been illegally continuing at Rahman Colony within Diphu Police Station was sought to be substantiated by the evidence of the Police Officer as above and the enquiry report Exhibit 2. The said witness testified that being ordered by the SP(B), Karbi Anglong District (order being Exhibit 1), he made an enquiry into the citizenship/nationality of the petitioner during which he visited her residence and that of two other inhabitants of the locality named Oheda Begum and Abdul Mannan. According to the witness during the enquiry/investigation, the petitioner could not produce any document in proof of her Indian citizenship and that the informations gathered by him revealed that the petitioner was a foreigner, i.e. a resident of village and P.S. Baragaon in the District of Noakhali of Bangladesh and that she had entered Assam after 1977 whereafter she had been residing in Rahman Colony in Diphu Town in Karbi Anglong District.

8. To the contrary the petitioner reiterated her version as pleaded in the instant petition and noticed hereinabove. She proved the certified copy of the voters' list, Exhibit A, of 1997 containing her name as a voter of the No. 19. Diphu (S.T.) Legislative Assembly Constituency. Her other witness, Smt. Bulu Devi deposed that she knew the petitioner from her childhood days. Her witness Ismail Seikh, however, conceded to have seen the petitioner at Diphu since 1980.

9. The learned Tribunal, on a consideration of the evidence adduced, accepted the case of the complainant State acting on the testimony of its witness and the enquiry report, Exhibit 2. It discarded the evidence of the petitioner and her witnesses as unconvincing. While recording the said finding, the learned Tribunal recorded the omission on the part of the petitioner to produce witnesses from the family of Abdur Rahman to corroborate her claim of having been reared up by him. It also noticed her failure to produce contemporaneous documents like voters list, land documents etc in authentication of her assertions. It was of the view that the State having prima facie established through the evidence of its witness that the petitioner had entered Assam from Bangladesh after 25/3/1971 without any legal authority, it was her burden to prove the contrary and that she failed to discharge the same.

10. On an analysis of the evidence adduced by the parties as minuted by the learned Tribunal, I do not feel persuaded to hold that the determination made by it is either illogical, absurd or pre-posterous to interfere therewith in the exercise of this Court's writ jurisdiction. No perversity as such is discernible in the assessment of the materials on record. The documents appended to this petition namely a copy each of Tauzi Bahi paying receipt in favour of Abdur Rahman, voters list of 1989 of No. 19 Bokajan Assembly Constituency of Assam containing his name, voters' list of 1989 for No. 19. Diphu (S.T.) Legislative Assembly Constituency containing the name of her first husband Abdul Malik, land certificate in his name, business licence of her present husband Md. Imamuddin Ansari and voters' list of 1997 for the No. 19 Diphu Legislative Assembly Constituency displaying her name as the voter, therefore, are of no determinative relevance in the face of the other evidence alluded hereinabove. The impugned judgment and order, therefore, does not warrant any interference.

11. The above notwithstanding in term of section 6(A)(iii) and section 18 of the Citizenship Act, 1955, the petitioner is entitled to get herself registered in accordance therewith. It would thus be open for her to approach the registering authority contemplated in the above statutory provisions for the said purpose. In case such an application is made by the petitioner within six weeks herefrom, the registering authority would deal with her application as required under the above provisions of the Citizenship Act, 1955, and pass orders as deemed fit and proper. For this period of six weeks the impugned order dated 19/5/2007 of the SP, Karbi Anglong, would remain in abeyance. The petition stands cl

osed in the above terms. No costs.